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Pre-sessional open-ended working group on a draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms
18-29 January 1993

COMMENTS ON THE FIRST READING TEXT

Report of the Secretary-General prepared pursuant to paragraph 5 of Commission on Human Rights resolution 1992/82

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Introduction

1. On the recommendation of its open-ended working group on the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, the Commission on Human Rights, in paragraph 5 of resolution 1992/82, requested the Secretary-General to circulate the report of the working group, including the first reading text of the declaration, to the Governments of all States Members of the United Nations and members of competent specialized agencies, and to interested intergovernmental and non-governmental organizations, with an invitation to submit written comments on the first reading text (E/CN.4/1992/53 and Corr.1, annex I) for consideration by the working group at its next session.

2. Pursuant to this request, a note verbale and a letter dated 17 June 1992 were sent by the Secretary-General to all Member States, to competent specialized agencies and to interested intergovernmental and non-governmental organizations, inviting them to submit their comments on the first reading text of the draft declaration.

3. By 6 November 1992, replies had been received from the Governments of Australia, Cuba, Czech and Slovak Federal Republic, Finland, Greece, Liechtenstein, Nigeria and Venezuela as well as from the International Labour Organisation, the Inter-American Commission on Human Rights and the International Criminal Police Organization (Interpol). Communications had also been submitted by the following non-governmental organizations: Amnesty International, Baha'i International Community, International Institute of Humanitarian Law, International Union of Students and World Muslim Congress.

4. All substantial comments so far received are summarized and reproduced below under appropriate chapters or articles, thus following the structure of the first reading text of the declaration.

5. Additional replies, if any, will be published in an addendum to the present document.

I. GENERAL COMMENTS

6. With regard to the text of the draft declaration contained in document E/CN.4/1992/53 and Corr.1, resulting from the deliberations of the open-ended working group at its January 1992 meetings, the Government of Cuba stated that it is not possible for Cuba to offer any final views as the text is only a partial version of the possible content of the envisaged declaration.

7. Before such views could be expressed, it would be necessary to wait until the group concluded its first reading of important parts of certain chapters of the draft declaration, especially as regards at least three major issues on which the group has not yet succeeded in reaching agreement owing to the particularly polemical and contradictory nature of the various proposals made during the group's deliberations. The issues are:

(a) The role, in general, of each country's national legislation in regulating the exercise of the rights referred to in the draft declaration in accordance with article 29, paragraph (2), of the Universal Declaration of Human Rights;

(b) The role, in particular, of national legal provisions on requirements for the entry of aliens into the country, the establishment of associations and other collective entities, the use of the mass media, the importation of goods and products, and the entry into the country of external financial resources in connection with the activities pursued by individuals and by national or international non-governmental organizations;

(c) The definition of the content of everyone's duties towards the society in which he lives (which have never been specified) in accordance with article 29, paragraph (1), of the Universal Declaration of Human Rights.

8. Nevertheless, the Government of Cuba considers that it could put forward some preliminary views regarding the draft declaration, its position being based on the full application of national legislation in all the areas referred to in the draft.

9. With regard to associations, the Government of Cuba considers that they should comply with the national administrative regulations issued in relation to them; mere agreement by a number of individuals to regard themselves as an association is not enough.

10. Consequently, it is clear that the draft declaration should not only refer to the rights of individuals, groups and institutions, individually or in association with others, to promote and defend human rights and fundamental freedoms, but also specify the modalities for the exercise of those rights and the restrictions to which they are subject in accordance with the relevant national legislation in force.

11. With regard to the controversial question of the financing of the activities of individuals, groups and institutions engaged in promoting and defending human rights, Cuba considers that they should use only funds and resources deriving from sources domiciled in the country in which such activities are being undertaken. All remittances of funds or other resources from abroad for such purposes should be subject, on a non-discriminatory basis, to the national regulations applying to such transactions in the country in question.

12. Regarding the question of the content of the duties of individuals, Cuba wishes to reiterate that all persons should endeavour to help establish a social and international order in which the rights and freedoms enunciated in the Universal Declaration of Human Rights might be fully attained.

13. Thus, everyone should behave in a manner in keeping with his duties towards the community to which he belongs, especially those relating to the promotion of the community's social and cultural identity and the self-determination of its people and to the achievement of equal rights and full dignity for all its members.

14. The Government of Finland felt that the draft declaration was an answer by the international community to the violence and repression towards human rights activists in various parts of the world. The network of human rights agreements, with the Governments' reporting obligations, with individual complaint procedures and with international supervisory bodies, remains futile from the point of view of the most severe violations of human rights, if the international community does not react, with determination, to the fact that the activities of human rights organizations and the chances by individuals to obtain information on their own rights are being impeded or that human rights activists and lawyers, even judges, are being attacked. States still have the prime responsibility, as also referred to in the declaration, within the legal system in each State, for ensuring that persons defending human rights will not be persecuted. Criminal legislation and the courts and other appropriate authorities' activities are important as they offer a means to respond to violations from the part of individuals. Therefore, the question is not, however, so much about the creation of a new set of norms in terms of their content, but rather a new moral confirmation of human rights protected by existing agreements. Furthermore, the draft declaration is suitable for bridging juridical examination of human rights on the one hand and human rights information and education on the other.

15. The Government of Australia expressed the view that the inclusion of "universally recognized" (currently in square brackets) as a qualifier of the term "human rights and fundamental freedoms" in 14 places in the draft text is unnecessary and, in general, an unacceptable limitation on the right of free speech. Full support should be given in the text to the right of people to advocate peacefully any purported rights (e.g. advocacy of land rights by and for indigenous peoples) not universally recognized.

16. On the same issue, the Government of the Czech and Slovak Federal Republic stated that it did not share the concern of some delegations expressed in the course of drafting exercises that the words "universally recognized" would be interpreted in a restrictive fashion. It would, therefore, be very much in favour of retaining the words "universally recognized" which have been placed in square brackets throughout the text.

17. The Government of Nigeria, in its comments, also spoke in favour of retaining the words "universally recognized" throughout the text.

18. Similarly, the Government of Venezuela stated that it was important to retain the expression "universally recognized" throughout the text, as those words appeared in the title of the document. Moreover, quite apart from the fact that human rights were intrinsic to the nature of man, the members of the international community had accepted their existence, the need to respect them and their inviolability in various instruments, documents, acts, declarations, etc.

19. The Government of the Czech and Slovak Federal Republic indicated that it had no special preferences as to the order of preambular paragraphs or of the operative articles. The order proposed in the draft text seems to be quite suitable.

20. In the opinion of the Government of Venezuela, the draft was rather lengthy and there was repetition of some provisions, which it should be possible to combine. That was also indicated by the Secretariat in the technical comments contained in Annex III to document E/CN.4/1992/53. The Government felt that it was important that the working group take up the suggestion in Annex III regarding the advisability of comparing the standards in the draft declaration with those in other international instruments on human rights and related questions. It was also stated that the Government would have no problem with Venezuela's supporting a document of the kind in question as none of the envisaged provisions conflicted with the country's national legislation. Moreover, Venezuela had always been in the forefront as regards the defence of and respect for human rights.

21. The International Labour Organisation indicated that the ILO's contribution to the discussion was oriented around its tripartite composition and its mandate to promote and protect the rights of employers and workers to join and form organizations to protect their social and economic interests. The draft would appear to touch on points that are relevant to these concerns, and the ILO understands the draft in its present form to cover employers' and workers' organizations. It is therefore appropriate to take into account the provisions of the ILO Constitution and of ILO standards on freedom of association, as well as the work of the ILO's supervisory bodies. It was also stated that most of the provisions of the draft, at its first reading stage, called for no comment on this basis, as they were broadly in accordance with ILO standards in this area.

II. COMMENTS RELATING TO THE PREAMBLE

22. The Government of Australia considered the preamble to be too long, given the substance of the material it contains. Its preference would be to delete the first, fifth, sixth and seventh paragraphs. In particular, the fifth preambular paragraph is unnecessarily lengthy and could alternatively be finished after "of peoples and individuals" to avoid the selective list of examples which follows.

23. The Government of the Czech and Slovak Federal Republic shared the view of some delegations that the preamble should reflect the core of the declaration without repeating the concepts expressed by other international instruments. As to the fifth preambular paragraph, the Government had certain doubts about the necessity to list just a few of human rights violations; such a list could never be exhaustive, and it is for the human rights defenders themselves to indicate the situations in which they claim violations of human rights.

24. The Government of Finland observed that the preamble of the draft declaration had been drawn up in the normal form, which shows the final acceptance by the United Nations General Assembly. In the fifth preambular paragraph, attention should be paid to a detailed analysis of the different forms of violations mentioned in the text and to the absence of the role of the State. Individual persons' contributions to the above matters are not often at all possible in the form presented in that paragraph.

25. The Government of Venezuela considered the order of the preambular paragraphs to be appropriate.

26. The Government of Nigeria suggested deleting the seventh paragraph of the preamble and rearranging the remaining paragraphs as follows:

Paragraph 9 as paragraph 1;
" 2 remains as such;
" 3 remains as such;
" 4 remains as such;
" 5 remains as such;
" 8 as paragraph 6;
" 6 as paragraph 7;
" 1 as paragraph 8.

27. The International Union of Students stated that it shared the observations pointed out by the International Commission of Jurists in order to make clearer that the words "to promote respect for" in Conference Room Paper 9 included the notion of respect through effective implementation, or respect in practice, and not just respect in principle or respect conceptually. Also, the term "to foster knowledge" should have the connotation of widespread dissemination, not just theoretical or knowledge within academic and governmental circles.

28. The IUS agreed with the observer of the United Kingdom that the wording should be improved to make clearer the obligation of States to implement in practice human rights and fundamental freedoms in Conference Room Paper 10.

29. With regard to Conference Room Paper 14, the IUS felt it necessary to discuss again its structure because the situations presented in section D do not necessarily result in massive, flagrant or systematic violations of human rights and fundamental freedoms. As the delegation of Portugal had said, there are other serious violations that are excluded, for example torture, forced disappearance and summary or arbitrary executions. Also, this section could be misinterpreted as a hierarchy of human rights violations. That kind of list should be avoided and the section should be reduced to nuclear ideas.

30. The International Union of Students shared the view of the International Commission of Jurists that, whatever the language adopted, it was for the victims themselves, as well as for the human rights defenders to decide which human rights violations were more deserving of their attention at any one time and at any one place.

III. COMMENTS RELATING TO THE ARTICLES

A. Chapter I

31. The Government of Australia considered that the order of articles in chapter I represented a logical progression.

32. The Government of Nigeria suggested that chapter I should be rearranged as follows:

(a) Article 3 be renumbered article 1 and to read:

"Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels";

(b) Article 2 remains as such with the following addition to read thus:

"Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms and shall adopt such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure the rights and freedoms referred to in this declaration";

(c) Article 1 renumbered as article 3.

1. Article 1

33. The Government of Finland noted that this article emphasizes that every party - both public and private - has a duty to refrain from violating human rights. In addition, the article strengthens and develops an individual's right and responsibility to refuse to participate in human rights violations as stated in the Nürnberg principles. The wording is rather successful, because it shows more clearly than the Nürnberg Principles of 1950, drawn up by the International Law Commission, and the Geneva Conventions of 1949, that a responsibility to refrain from participating in outrageous violations of human rights entails also a right to refuse this kind of participation.

34. For the proposal of the Government of Nigeria, see paragraph 32 (c) above.

2. Article 2

35. The Government of Finland expressed the view that an emphasis on the prime responsibility of each State is appropriate.

36. The Government of Greece proposed the addition, after the word "social", of the following words: "cultural (more particularly educational)".

37. For the proposal of Nigeria, see paragraph 32 (b) above.

3. Article 3

38. The Government of Finland felt that the fact that the paragraphs relating to individuals and associations of individuals (especially non-governmental organizations that promote human rights) have been drafted, as far as possible, in the form of a right, is a good solution.

39. For the proposal of Nigeria, see paragraph 32 (a) above.

B. Chapter II

40. In connection with articles 1 to 4 of chapter II, the Government of Finland referred to its comments relating to article 3 of chapter I (see paragraph 38 above).

41. In its general comments relating to chapter II, the Baha'i International Community stated that it believed that the right to freedom of information protected by agreed chapter II of the text is essential if fundamental human rights and freedoms are to become a reality for all human beings. The enjoyment of these fundamental freedoms is a prerequisite to the full flowering of each individual's innate capacities and potential, and to the preservation of his or her honour and dignity as a divinely-created being. The first step in exercising one's rights is to know them; for without knowledge, no action is possible.

42. More important, as emphasized by the draft declaration, and especially article 5 of chapter II, education in fundamental human rights enables each individual to become more sensitive to the rights of others. It permits each person to develop a personal commitment to developing a community ethos - in one's village, town or city, region, country and the entire planet - that encourages mutual respect for others and that upholds basic standards of human dignity.

43. Indeed, in the Baha'i view, while enlightened government policies and legal safeguards are essential to the protection of human rights, the enjoyment of human rights in the everyday lives of people depends ultimately on how individuals are treated by their fellow citizens. If they are welcomed with open arms by stranger and family alike as fellow members of one human family, regardless of their skin colour, religious affiliation, or any other external factor by which people may be unjustly prejudged, then human rights for them will not be a mere paper ideal; human rights will become a tangible part of their daily existence.

44. Baha'is believe that this attitude of welcoming others, of treating them with genuine respect and compassion, must come from a deep-seated love for humankind. This love cannot be developed by compulsion, but can be nurtured through education in the multitude of scientific, sociological and spiritual evidences which confirm that humanity - blessed by a myriad of physical and cultural variations - constitutes a single species and one human family.

45. Accordingly, in the Baha'i outlook, the right to education enunciated in article 5 of chapter II has particular importance as the most essential method for not only disseminating knowledge of human rights generally, but also building a durable, supportive social order in which human rights are a day-to-day reality for every individual.

1. Article 1

46. The Government of Australia stated that, in article 1, it would prefer "others" as being both more elegant in expression and possible less restrictive in practice than "all other members of the community".

47. In the view of the Government of the Czech and Slovak Federal Republic, the word "others" now in square brackets in article 1 follows the philosophy of human rights contained in the International Bill of Human Rights. It is, therefore, in favour of retaining this word and of removing square brackets from the text of this article.

48. The Government of Nigeria proposed the deletion of the words "and those of [others]" at the end of article 1.

2. Article 2

49. No comments were received.

3. Article 3

50. The Government of Australia indicated that in article 3, its preference is for the inclusion of the language in square brackets in the text, as this would accord with the universal nature of the right being recognized. The wording of the bracketed text would be improved by the replacement of "on" with "to".

51. The Government of the Czech and Slovak Federal Republic stated that it supported the keeping in place of the words in brackets contained in article 3.

52. The Government of Nigeria also considered that the bracketed words should be retained.

4. Article 4

53. No comments were received.

5. Article 5

54. In the opinion of the Government of Finland, paragraph 2 of the article is unsatisfactory. Now that the duty described in paragraph 1 is being specified, the objective should be full coverage. For example, subparagraph (a) should be complemented by information on the existence of national and international legal remedies (e.g. "... and of available national and international complaint procedures and other remedies"). Articles 1 and 2 of chapter IV do not exclude the need of reformulation of this paragraph, which is specifically about an individual's right to obtain information. Subparagraph (b) has been written in a form which represents the State's passive involvement ("full and equal access"), even though it would be possible to recommend an active duty to inform, publish and even translate.

55. The Government of Greece proposed the addition, after the word "education" in paragraph 3 of article 5, of the following phrase: "including the training of teachers entrusted with teaching human rights at the primary and secondary levels".

C. Chapter III

56. In its comments on the issue of financial contributions, the International Union of Students stated that it agreed with the 1991 proposal of Portugal and Sweden according to which individuals and groups should not be prevented from fund-raising activities. The IUS considered that the text proposed by the Chairman-Rapporteur at the 13th meeting of the Working Group in 1992 (Conference Room Paper 21) was the most complete and accurate.

1. Article 1

57. The Government of Finland considered that, for the draft declaration to be more coherently formulated, it would be better to use the wording of article 1 of chapter IV, ("In the exercise of ...").

58. The International Labour Organisation noted that article 1 of chapter III of the draft corresponds to the right of freedom of association contained in the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In order to be in closer conformity with the provisions of that Convention, it is proposed that the following words be added to subparagraph (b): "of their own choosing without previous authorisation". This would correspond to article 2 of Convention No. 87, as well as to the requirements of article 8(1)(a) of the International Covenant on Civil and Political Rights.

59. In the view of the ILO, it might be desirable to insert in this chapter a provision comparable to that of article 8(1)(c) of the International Covenant on Economic, Social and Cultural Rights concerning the right of organizations to function freely "subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." Comparable provisions are found in articles 3 and 8 of Convention No. 87. Note is taken of article 3 of chapter V of the draft, but this might more appropriately be placed in the same chapter as that covering the establishment of organizations.

60. Amnesty International proposed to include in this draft text an additional element which should consist of a clear statement of the right to draw public attention to relevant issues concerning the promotion and protection of human rights at the international as well as the national level. This would be particularly relevant in chapter III, article 3; and in chapter IV, article 2(a) where the concept of raising issues at the international level is already partially implicit in the reference to competent international bodies. Amnesty International suggested that this proposal could be most easily accommodated by the addition of a new point (d) in chapter III, article 1, which might read "To disseminate information and draw public attention to human rights issues by other peaceful means".

2. Article 2

61. The Government of Finland felt that the inclusion in the declaration of the right to participation was a positive point. The word "Government" might be given a more detailed content or it might be replaced with another expression.

3. Article 3

62. The Government of Australia considered that a suitable compromise formulation might be the inclusion of "or incitement to such violations" after the text of this article.

63. The Government of the Czech and Slovak Federal Republic believed that the protection of human rights against violations on the part of States and their institutions should be a prior concern in drafting the present declaration. Moreover, it is the State that should have the main responsibility in protecting human rights and fundamental freedoms against violations through activities of private groups and persons. Draft article 3 in the opinion of the Government, fully covers this purpose.

64. The Government of Nigeria stated that article 3 should be retained but the following words should be added to read:

> "[Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms [perpetrated by any State, group or person]]".

65. The Government of Venezuela felt that the wording of article 3 proposed in the document was clearer and more concise than the wording proposed on page 35 of the report.

66. It was proposed by Amnesty International that another additional element by included in the text which should consist of a clear statement concerning the right to attend trials at the international level, as already provided for at the national level in chapter IV, article 2(d). This might best be accommodated by the addition of the following paragraph incorporated as chapter III, article 3 bis of the text: "Everyone has the right to attend as an international observer public court hearings and trials in any country to assess their fairness and compliance with national and international standards; it being understood that such proceedings or trials may only be held in camera in circumstances prescribed by law and consistent with obligations under international law and international commitments".

4. Article 4

67. The Government of the Czech and Slovak Federal Republic wished to underline the importance of the right of human rights defenders to solicit, receive and utilize voluntary financial and other contributions set forth in draft article 4 with the purpose of ensuring their independence and freedom of action in the field of human rights protection. This right to receive such contributions should not be subject to any unnecessary restrictions, be it

from sources coming from the country concerned or from abroad. The Government would, therefore, be very much in favour of retaining the words in both sentences of draft article 4, now in brackets.

68. In the view of the Government of Finland, financial contributions to the promotion of human rights activities, especially foreign financing, is, without doubt, a rather sensitive point in the declaration. From this point of view, the draft appears more than satisfactory, although the word "sole" in the first sentence may be seen as a justification for control by authorities.

69. The Government of Nigeria proposed an alternative text to the second sentence of article 4 which would read as follows:

> "Such contributions from abroad shall be subject, on a non-discriminatory basis, to the national legislation applicable to the entry of funds, goods and services".

70. The Government of Venezuela advised that the text appearing in square brackets for the first sentence is acceptable, with deletion of the word "should". As regards the second sentence, the version proposed in paragraph 3 on page 35 of the document under consideration is more appropriate.

71. The International Labour Organisation stated that its preference would be to retain a broad text, which reflects the ILO supervisory bodies' jurisprudence on receipt of foreign funding by trade unions, namely that such contacts and funding are a corollary of the right to affiliate to international organizations of workers or employers. Further details can be provided on this if required. In the same provision, the phrase beginning "for the sole purpose" might be widened to allow such funding for carrying out their legitimate activities, since the wording as it now appears might be taken to be unduly restrictive.

D. Chapter IV

1. Article 1

72. The Government of Nigeria stated that human rights referred to in the first line and in the declaration are understood as the same as the universally recognized human rights and fundamental freedoms. The alternative text suggested is as follows: "In the exercise of the right to promote and protect the universally recognized human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of those rights."

2. Article 2

73. According to the Government of Finland, the requirements in subparagraph (b) may be too exacting, in view of the fact that even the European Convention for the Protection of Human Rights and Fundamental Freedoms does not require review by an independent judicial authority in all cases where a person considers that his/her human rights have been violated (see chapter 1 of article 6 and article 13 in the Convention). Finland considered that Germany's comment on the content and wording of the article is

justified: according to the present text, everyone would be entitled to present a complaint on human rights violations - one need not be a party or even present a more indirect ground for having a right of action. It is in fact appropriate, where human rights violations are concerned, that legal remedies are available both to the interested parties and also to others, but not necessarily to the same extent as with respect to the interested parties.

74. The Government of Nigeria proposed an alternative text of paragraph (b) of article 2 reading as follows:

> "(b) Complain to an independent, impartial and competent judicial or other authority established by law which shall promptly review and decide such complaint in a public hearing."

3. Article 3

75. The Government of Finland considered that the proposal for an addition by the International Commission of Jurists was justified.

4. Article 4

76. In the view of the Government of Finland, in this article, the target group was too loosely defined ("individuals or groups whose professional or occupational activities may affect the enjoyment of human rights"). The text would become more meaningful if the target group was specified, for instance, by mentioning a few lines of work as examples.

E. Chapter V

77. With regard to the issue of the role of national legislation, the International Union of Students considered that the text should express clearly the necessary respect to national legislation, but it is important too to take into consideration that any kind of "internal immunity" must be avoided. The International Union of Students shared the view of Amnesty International, because it is true that at times national legislation contradicted international standards, as evidenced by the concern of the United Nations about apartheid. As the observer of the International Commission of Jurist said, in a text which primarily sought to ensure openings for the promotion of human rights by individuals and groups, there was no need for specific limitations provisions. Therefore, in the opinion of the IUS, the text proposed as A bis (para. 122 of the 1992 report) is the most accurate.

1. Article 1

78. The Government of Australia stated that its preference would be to retain the words in brackets as being more inclusive.

79. The Government of the Czech and Slovak Federal Republic reported that it did not see any difficulty in retaining the words in brackets.

80. The Government of Nigeria also considered that the words in brackets should be retained.

81. According to the Government of Venezuela, the words in square brackets should be retained in order that other types of instruments relating to human rights might be covered.

82. The International Labour Organisation stated that it would favour the retention of the words in brackets. The ILO considered it essential to refer to other international instruments which have been adopted in order to avoid risks of conflict with the international human rights standards adopted by the ILO as well as other human rights standards adopted by the United Nations itself. Reference was made in this connection to article 8(3) of the International Covenant on Economic, Social and Cultural Rights, and article 22(3) of the International Covenant on Civil and Political Rights, both of which contained an even more explicit "savings clause" relative to ILO Convention No. 87.

2. Article 2

83. No comments were received.

3. Article 3

84. The Government of Finland stated that this kind of a restricting clause was acceptable, but its wording should be developed. Of the three main elements applied in human rights treaties (being prescribed by law, having a legitimate aim and being necessary in a democratic society), the two first ones have been incorporated but not - at least very clearly - the third one. It should be included in the draft, because only it makes the imposition and implementation of restrictions subject to the principle of proportionality. The words "necessary in a democratic society" should therefore be added in the article. At the same time, the words "and of meeting the just requirements of morality, public order and the general welfare in a democratic society" should be reconsidered and either omitted or reworded. It would be important that the wording of different agreements would not diverge, and that even here the expression used, for instance, in the International Covenant on Civil and Political Rights be applied.

85. The International Labour Organisation expressed the view that this text might more appropriately be placed in the same chapter as that covering the establishment of organizations (see also para. 59 above).

4. Article 4

86. No comments were received.

5. Article 5

87. The Government of Australia recognized that article 5 deals with a controversial issue. The first bracketed paragraph, in particular, introduces the notion of the duties of the individual. It is of concern that this provision might be used to read down the previous provisions of the text in a manner damaging to the purpose of the declaration, which is focused on the

rights of everyone, acting individually or in association with others, and exhorts States to take certain positive action. The deletion of the first bracketed paragraph might make article 5 more acceptable.

88. The Government of the Czech and Slovak Federal Republic stated that it did not see any difficulty in retaining the words in brackets.

89. According to the Government of Finland, articles 1, 3 and 4 of this chapter formed a sufficient foundation for the obligations of individuals and groups. Even if article 5 was based on a model to be found in the Universal Declaration of Human Rights, its omission from a text meant for the twenty-first century should be considered. If the article won't be omitted entirely, the wording of an alternative number 3 (p. 39) appeared to Finland most promising.

90. The Government of Nigeria proposed to retain the alternative texts provided for the three sentences under paragraph 6 of the commentaries on the article.

91. The Government of Venezuela stated that, as regards article 5, it supports the proposal that the first sentence be retained and the two following sentences be deleted, as the ideas contained in the latter appear in other parts of the document.

92. The International Labour Organisation noted that clarification may be needed in the first sentence of article 5, if it is retained, as to what constitutes "the community".

93. The Baha'i International Community considered article 5 as one of the most important provisions of the draft declaration. It was noted, inter alia, that the realization of human rights does not only involve action by the Government or freedom from unjust Government interference or oppression; rather, it requires the construction of a progressive social order from the ground-level upwards, and the development of new ways of relating between human beings. It demands a new awareness of the reality of human unity and the development among all people of an all-inclusive notion of community that extends from the family to villages, towns, cities and localities, to nations, and most importantly, to the boundaries of the planet itself.*

94. The Baha'i International Community stated that it supported the general outlines of the proposed text for article 5. However, it believed that the text could (a) more explicitly acknowledge the responsibility of each individual to promote the well-being of others, as well as of the community as a whole; (b) recognize that the concept of "community" must encompass every level of society, including the world community, in order for human rights to become a reality; and (c) consistent with the title of the draft declaration,

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* The full text of the statement submitted by the Baha'i International Community is available for consultation in the files of the Secretariat.

recognize that promoting respect for the human rights of others is not only a right of entitlement, as suggested by at least one proposal before the working group, or only a responsibility, but is both.

95. The Baha'i International Community is aware that the working group has already laboured very diligently to arrive at agreement on the essential elements of the draft text. Accordingly, its suggestions attempt to preserve the existing wording of the text as much as possible.

96. In keeping with the above views and considerations, the Baha'i International Community made the following proposals concerning the text of article 5:

(a) The second sentence be amended to read as follows:

"Everyone, individually as well as in association with others, HAS THE RIGHT AND RESPONSIBILITY to promote THE WELL-BEING, AND respect for the rights, freedoms, identity and human dignity, of all other members of HIS OR HER LOCAL, NATIONAL AND INTERNATIONAL COMMUNITIES, as well as TO PROMOTE THE WELL-BEING AND RESPECT for the identity of THESE COMMUNITIES as a whole." (Additional text in capitals.)

(b) The third sentence be amended to read:

"The establishment of a social order, AT THE LOCAL, NATIONAL AND INTERNATIONAL LEVELS, in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized is the responsibility of everyone." (Additional text in capitals.)

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Pre-sessional open-ended working group
on a draft declaration on the right
and responsibility of individuals,
groups and organs of society to
promote and protect universally
recognized human rights and
fundamental freedoms
18-29 January 1993

TECHNICAL REVIEW OF THE FIRST READING TEXT

Report of the Secretary-General
prepared pursuant to paragraph 6 of Commission
on Human Rights resolution 1992/82

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Introduction

1. On the recommendation of its open-ended working group on the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, the Commission on Human Rights, in paragraph 6 of resolution 1992/82, requested the Secretary-General to undertake a technical review of the first reading text of the draft declaration in accordance with the guidelines contained in the report of the working group (E/CN.4/1992/53 and Corr.1, annex III) and to distribute the results to all States Members of the United Nations and members of competent specialized agencies, to persons chairing the human rights treaty bodies and to interested intergovernmental and non-governmental organizations.

2. The guidelines established by the working group relating to the technical review read as follows:

"Technical review

Bearing in mind General Assembly resolution 41/120 and in accordance with United Nations technical standards and practices, the technical review of the draft declaration should:

1.Identify overlaps and repetitions between and within draft articles;

2.Harmonize the different language versions;

3.Check for consistency in the text, including the use of key terms and the use of gender-neutral language;

4.Make textual and editorial suggestions and recommendations as to how any overlaps or inconsistencies identified might be corrected by the Working Group before the submission of the draft declaration;

5.Compare the standards in the draft declaration with those in other widely-accepted human rights instruments.

The technical review should not enter into areas of substance but should be confined to the technical aspects of the draft."

3. Pursuant to this request, the Centre for Human Rights undertook the task of carrying out its own internal technical review of the first reading text of the draft declaration. In addition, the assistance of the Under-Secretary-General for Legal Affairs, the Legal Counsel, was requested on matters within the Counsel's area of competence relating to the draft declaration.

4. The present document contains the comments and suggestions of both general and specific character relating to appropriate chapters and/or articles of the English, French, Russian and Spanish versions of the first reading text of the draft declaration.

I. GENERAL COMMENTS AND SUGGESTIONS

5. In his observations, the Legal Counsel expressed the view that such a technical review could be more useful if conducted at a later stage when the substance of the subject-matter has been classified and the draft text of the declaration has undergone a revision. Therefore, the comments of the Legal Counsel were necessarily limited by these circumstances.

6. The Legal Counsel recommended that, unless there were special reasons, the articles should be numbered consecutively instead of separately under each chapter, since the present approach could create problems of interpretation. Whether it was necessary to subdivide the declaration into chapters should also be considered.

7. According to the established practice, when an instrument is divided into chapters, those should in principle have a title. Also, even more common is the use of the terms "section" or "part".

8. The use of gender-neutral language should be ensured throughout the French version of the first reading text of the draft declaration. It relates in particular to chapter I, article 3; chapter II, articles 1, 2, 3 and 4; chapter III, articles 1, 2 and 3; chapter IV, articles 1 and 2; and chapter V, articles 3 and 5, where the word "chacun" should be replaced by the words "toute personne".

9. The Legal Counsel noted that a variety of terms had been used in the draft text, e.g., "no one", "each State", "everyone", "all persons", "individuals, groups and associations", "everyone, individually or in association with others", and "all members of the international community". A uniform terminology should be found to ensure consistency and to delineate the scope of the subject. It is also important that the term selected should be consistent with the title of the declaration (see also para.11 below).

10. The Legal Counsel also stated that while the title of the draft declaration did not include "State", several articles referred to State responsibility, for example, chapter I, article 2; chapter II, article 5; chapter IV, article 3. The question to be considered is whether the role of the State should hence be reflected in the title of the draft declaration.

11. It may be observed in this connection that the term "organs of society" which is used in the title of the draft declaration and only once thereafter (in chapter V, article 4) is new for the terminology of human rights instruments. Moreover, in the Spanish version, this term is translated by "instituciones" (institutions), a word also used to translate in Spanish the word "associations" in the expression "individuals, groups and associations" found in the fifth and ninth preambular paragraphs. The Working Group might therefore consider whether the terms "organs of society", "associations" and "organizations" should be defined and afterwards be harmonized in all language versions (see also para.9 above and paras.19 and 21 below).

12. According to the Legal Counsel, it seems that different meanings could be given to the terms "human rights and freedoms" and "human rights and fundamental freedoms"; in most places, they are qualified by [universally recognized]; in other places, no such qualification is added and various

expressions were used; for example, in chapter II, articles 1, 2(a), 3 and 5, para.3; in chapter III, articles 2 and 3; in chapter IV, articles 2(a) and 3(a); in chapter V, articles 2, 3 and 5, para.2. Since the expression "human rights and freedoms" is a key term in the text, its meaning should be maintained in a consistent manner.

13. In order to harmonize the title with the rest of the draft declaration, the words "universally recognized" contained in the title should also be put into brackets.

II. COMMENTS AND SUGGESTIONS RELATING TO THE PREAMBLE

14. The Legal Counsel expressed the view that the order of the preambular paragraphs should be reorganized so that they proceed from general to specific objectives. Also, paragraphs expressing the same ideas should be combined.

15. For consistency with already adopted instruments, the Working Group may consider the inclusion, in the first preambular paragraph, of several additional elements with regard to which no distinction should be admitted: descent and ethnic origin (see article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination); conviction, nationality, age, economic position and marital status (see article 1, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families); and disability (see article 2, paragraph 1, of the Convention on the Rights of the Child).

16. In the second preambular paragraph of the English, Russian and Spanish versions, the word "persons" could be deleted.

17. In the French version, the last words of the third preambular paragraph should be amended as follows to reflect more closely the English original: "adoptées au sein de l'ONU et des organisations qui lui sont reliées.".

18. Editorial point: in the fourth preambular paragraph, the word "further" should be replaced by "also".

19. In the Spanish version, the word "associations" in the expression "individuals, groups and associations" in the fifth preambular paragraph (second line) should be harmonized with other language versions (see also para.11 above).

20. At the end of the sixth preambular paragraph, the words "with these rights" could be added for better wording. This applies to the English and Russian versions only.

21. In the Spanish version, the word "associations" in the expression "individuaals, groups and associations" in the ninth preambular paragraph (first line) should be harmonized with other language versions (see also para.11 above).

22. It is proposed to replace the word "Declares" at the end of the preamble by one of more commonly used formulations, like "Proclaims this Declaration" or "Proclaim this Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".

III. COMMENTS AND SUGGESTIONS RELATING TO THE ARTICLES

23. The expression "individually or in association with others", which has been unbracketed and agreed upon by the Working Group on 20 January 1992 (see para. 55 of the 1992 report of the Working Group), appears 13 times in the first reading text. However, in some places of the English version, the word "or" is replaced by "and" (articles 2 and 3 of chapter I; article 3 of chapter II; articles 1, 2 and 3 of chapter III; and article 5 of chapter V), while in articles 1 and 2 of chapter II the words "as well as together with others" were used instead of "or in association with others". To ensure uniformity, these divergencies should be eliminated.

24. These remarks apply also to varying degrees to the French, Russian and Spanish versions.

Chapter I

Article 1

25. In the French version, the square brackets around "individually or in association with others" should be deleted.

26. In the French version, the word "châtié" could be replaced by "puni".

Article 3

27. Since this article speaks of the "right" which, in the title of the draft declaration, precedes the "responsibility", the Working Group may wish to reconsider the order of paragraphs in chapter I so that the present article 3 becomes article 1.

Chapter II

Article 1

28. For uniformity, the words "all persons" in the English and Russian versions should be replaced by "everyone".

29. In the French version, the words "avoir connaissance" could be replaced by "connaître" for better wording.

Article 3

30. The Legal Counsel observed that this article referred to "these rights and freedoms". The meaning of "these" is not clear; it could refer to a number of things: the rights and freedoms referred to in articles 1 and 2 of chapter II, those contained in chapter II, or those referred to in the draft text as a whole.

Article 5

31. In paragraph 2(b) it is proposed to replace the words "established by" by "established under" (in French, to replace the word "par les" by "en vertu des") and to delete the adjective "official" as redundant. In the English version the word "report" should be plural.

32. In paragraph 3 of the English version, the words "law enforcement officers" differ from the established term "law enforcement officials" (see Code of Conduct for Law Enforcement Officials of 1979). An appropriate correction is also needed in the Russian text.

33. Also in paragraph 3, the expression more generally used is "members of the armed forces" rather than "personnel of the armed forces" (see article 43 of the Protocols Additional to the Geneva Conventions of 12 August 1949).

34. In the French version of paragraph 3, the words "fonctionnaires de l'Etat" could be replaced by "agents de la fonction publique", as it has been used in a similar context in article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

Chapter III

Article 2

35. Since the distinctions pertaining to non-discrimination have been mentioned only in the preamble, the term "on a non-discriminatory basis" used in this article does not seem to be clear enough. The Working Group may therefore wish to consider the inclusion of those distinctions in the operative part of the draft declaration.

36. Editorial suggestion: to replace, in the second sentence, the word "and" before the word "organizations" by "as well as to".

Article 4

37. In the second paragraph, the word "generally" does not appear in the French version.

38. Editorial suggestion: to replace "and" after the words "goods and services" by a semicolon.

Chapter IV

Article 2

39. In the French version, sub-paragraph (f) appears which does not exist in other language versions.

Article 3

40. In sub-paragraph (a), the word "adverse" before "discrimination" seems to be redundant.

41. In sub-paragraph (b), it is proposed to replace the word "development" by "establishment".

42. In the French version of sub-paragraph (b), the word "ombudsmen" should be added between brackets after the word "médiateurs".

43. In the French version of sub-paragraph (c), the words "présomptions raisonnables" should be replaced by "motifs raisonnables de croire".

Chapter V

Article 1

44. In the view of the Legal Counsel, since articles 1 and 4 of chapter V deal with the same subject matter, they might be merged into one article or be contained in two separate paragraphs of the same article.

45. Editorial suggestion: to modify the phrase in brackets to read either"[and other international human rights instruments]" or "[and other international instruments in the field of human rights]".

Article 5

46. According to the Legal Counsel, article 5 does not seem to belong to chapter V.

47. The Legal Counsel also noted that this article used the word "duties" whereas the word "responsibility" was used elsewhere. A consistency should be maintained unless there are special reasons.